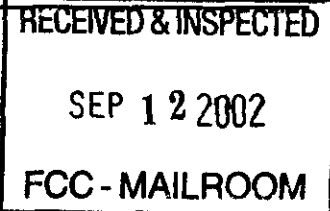


## Federal Communications Commission

DA 02-2151

Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of

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Amendment of Section 73.622(b),

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MM Docket No. 00-76

Table of Allotments,

)

RM-9809

Digital Television Broadcast Stations.

)

(Urbana, Illinois)

)

**MEMORANDUM OPINION AND ORDER****(Proceeding Terminated)****Adopted: September 4, 2002****Released: September 10, 2002**

By the Chief, Video Division:

1. The Commission had before it a petition for reconsideration filed by WGN Continental Broadcasting Company ("WGN"), licensee of station WGN-TV, NTSC channel 9, Chicago, Illinois, of the *Report and Order*, 15 FCC Rcd 18345 (2000), which substituted DTV channel \*9 for station WILL-TV's assigned DTV channel \*33 at Urbana, Illinois.<sup>1</sup> The University of Illinois Board of Trustees ("The University of Illinois"), licensee of noncommercial educational station WILL-TV, Urbana, Illinois filed an opposition to the petition for reconsideration. WGN filed a reply to the opposition of its petition for reconsideration.

**BACKGROUND**

2. At the request of The University of Illinois, the Commission issued a *Notice of Proposed Rule Making*, 15 FCC Rcd 18345 (2000), proposing the substitution of DTV channel \*9 for station WILL-TV's assigned DTV channel \*33 at Urbana. In response to the *Notice*, The University of Illinois filed comments stating its intention to apply for DTV channel \*9 at Urbana, if allotted. No other comments were received.

**THE PLEADINGS**

3. In its petition, WGN contends that it is adversely affected by the decision of the Commission granting the substitution of WILL-TV's DTV channel \*9 for its assigned DTV channel \*33 due to the level of incremental interference such a channel change is likely to cause. WGN states that recent information in a communications news publication suggests that the Commission's DTV model may underestimate the level of actual interference caused by co-channel DTV stations to NTSC stations. Specifically, WGN notes that a NTSC station, WOOD-TV, operating on channel 8 in Grand Rapids, apparently received higher levels of incremental interference from the co-channel DTV operations of WMVS-DT in Milwaukee than predicted by OET 69, citing; *Electronic Media*, page 8, September 25, 2000 and *Communications Daily*,

<sup>1</sup> Public Notice of the Petition for Reconsideration was given on December 5, 2000, Report No. 2454.

September 21, 2000. WGN believes that based upon these news articles, our previous action in this matter should be reconsidered or, in the alternative, indefinitely suspended until more information is available about the extent of actual interference the proposed operation will cause to WGN's service area. WGN submits that reconsideration in this proceeding is appropriate in these circumstances because the channel change proposal is supported by nothing other than the cost savings WILL can achieve by operating on a DTV VHF channel rather than a UHF channel. WGN states that it is willing to work with The University of Illinois to explore the level of interference that the channel change is likely to cause. If such an investigation reveals that the actual levels of interference will approximate the levels predicted by the Commission's model, WGN states it will voluntarily withdraw its petition.

4. In its opposition, The University of Illinois states that WGN's petition, which is woefully late, did not provide a shred of data to support its contention, other than an article published in a trade publication of September 25 stating .... "(b)ased on recently available information suggesting (Emphasis added) that a DTV station will cause co-channel interference to an NTSC station in excess or that predicted by the FCC's OET 69 model"... Furthermore, The University of Illinois argues that as far as it is aware, the Commission does not determine whether the public is or is not well served by un-sworn, unsubstantiated, generalized information of this type, especially when the information only "suggests" a problem. Thus, it argues to grant such an opposition would make a mockery of the Commission's procedures.

5. In reply, WGN claims that The University of Illinois' opposition is more instructive for what it does not say than for what it does say. It concedes that the basis for its concerns did not become known until recently. However, WGN submits that the information regarding WOOD-TV's interference problem was only made public in September 2000, and thus WGN was precluded from bringing it to the attention of the Commission earlier in this proceeding. WGN continues to argue that the similar propagation characteristics of WOOD-TV's NTSC channel 8 and WGN-TV's NTSC channel 9 provides ample basis to be concerned about increased interference caused by WILL's proposed channel change. WGN reiterates that given the potential of increased interference to WGN viewers, the potential cost savings to WILL no longer supports the determination that this voluntary channel change is in the public interest.

## DISCUSSION

6. After carefully considering the arguments presented by both WGN and The University of Illinois, we will deny the petition for reconsideration. Section 1.429 of the Commission's Rules governs the filing and consideration of petitions for reconsideration in notice and comment rule making proceedings. Section 1.429 also permits grant of a reconsideration request based on facts not previously presented to the Commission where: (1) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission; (2) the facts relied on were unknown to the petitioner until after the last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or (3) the Commission determines that consideration of the facts relied on is

required in the public interest. Here, however, WGN has provided no good reasons for reconsideration of our previous action in this rule making. The new "facts" on which the petition for reconsideration relies are nothing more than the unsubstantiated suggestion of the possibility of interference published in a trade magazine. We previously examined the engineering data submitted by the University of Illinois and determined that the proposal complied with all of our technical rules and requirements. WGN has not provided any technical support for its assertions and we will not delay further the implementation of the channel substitution proposal based upon news articles. The petition for reconsideration fails.

7. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by WGN Continental Broadcasting Company IS DENIED.<sup>2</sup>

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>2</sup> The University of Illinois filed its application for a construction permit on channel \*9 on May 23, 2002. WGN filed a Motion to Dismiss the application citing a pending petition for reconsideration of the channel substitution. Because of our action in this proceeding, the Motion to Dismiss is hereby dismissed.